(5) of Section 5 to accede to these two Prayers "on special grounds".

The grant of Prayer 1 would be of no value to the Petitioner unless Prayer 2 was acceded to and the latter therefore calls for prior consideration.

The policy of Section 5 (3) is clearly that practitioners shall, before admission, acquire such knowledge and experience of local laws and practice as will ordinarily be obtained by attending at the office of a local practising advocate and solicitor of not less than 7 years standing for the prescribed period which in the case of this petitioner is 6 months. It follows that any special grounds advanced in support of an application under Section 5(5) to shorten the prescribed period must satisfy the Court either, that it is in the public interest or otherwise desirable that this policy should not be strictly adhered to in a particular case, or, that the petitioner has acquired the requisite knowledge and experience in a manner or period other than that provided.

The petition shows that the petitioner served in the Legal Branch of the Royal Air Force, South East Asia Command, from an unspecified dated in 1944 until September 1946 and that part of that service namely from October 1945 till September 1946 was in Singapore. The petition also shows that the petitioner has attended at the office of an advocate and solicitor of 7 years standing for 77 days and that he has received instruction from three local advocates and solicitors and studied the local laws with a view to admission.

On these facts it is submitted that the petitioner has received instruction and practical experience in Singapore since October 1945 and I am asked to shorten the period of 6 months prescribed by Section 5 (3).

The petition is opposed by the Bar Committee of Singapore, which has been represented by Mr. Mallal. Mr. Mallal submitted that if this petition was acceded to, it would open the door to similar applications from persons who had merely studied the local laws. I agree that this aspect requires careful consideration but I find my real difficulty is how to assess the practical value of petitioner's experience in the Legal Branch of the R.A.F. Can one year's experience in the law relating to the Royal Air Force plus 77 days' attendance at the office of a local practising advocate and solicitor be deemed equivalent to the 6 months' experience prescribed by Section 5 (3)? This Court has no knowledge of the work of the Legal Branch of the Royal Air Force and no means of assessing the value of experience in such work. Prima facie, it would appear to be highly specialised work closely concerned with the Royal Air Force law and the petition does not disclose any grounds for assuming that it gives any opportunity for acquiring knowledge and experience of the kind obtainable in the office of a local practising advocate.

There are no grounds for ignoring the policy embodied in Section 5 (3) and the facts relied upon by the Petitioner to support his petition do not satisfy me that he has had an opportunity of acquiring the kind and amount of local knowledge and experience envisaged by Section 5 (3). I am therefore unable to accede to Prayer 2 of the Petition and it is rejected. Prayer 1 must also be rejected as its value depends on the acceptance of Prayer 2.

The remaining Prayer in the petition, namely, that the petitioner should be admitted and enrolled will be adjourned generally, and may be brought on for hearing again in due course by the petitioner subject to compliance with the other provisions of the Ordinance.

Order Accordingly.

THE S. S. MATANG.

[Appellate Civil Jurisdiction (Brown, J. assisted by Commander R. K. Hudson, R.N. and Captain D. W. Clark, as Assessors) May 30, 1947]

Merchant Shipping Ordinance (Cap. 150), Section 306 — The Shipping Casualties and Appeals and Rehearings Rules, 1911, Rule 21 — Stranding of Vessel — Negligence of Master.

This was an appeal by the Captain of the S. S. Matang from the order of a Court of Investigation appointed to examine the circumstances attending the stranding of the vessel. The short point for decision in the case was whether the appellant was negligent in proceeding to make a land fall after 17 hours steaming by dead reckoning, without taking soundings or other precautions in view of the poor visibility then obtaining and the absence of shore lights or other navigational aids which might have enabled him to check his dead reckoning position.

Held, (1) that the failure to take soundings in order to be excusable must be conditional upon the Captain being satisfied with the dead reckoning position but that in this case it was not excusable as the appellant took no steps to satisfy himself that his dead reckoning position was correct; (2) that in the view of the Court, in no waters can it be other than negligent when making a landfall to assume that no set will take place which may so falsify the dead reckoning position (after 17 hours) as to bring the vessel within dangerous proximity to the offlying dangers of the coast.

Cases referred to :—

(1) *The Kestrel* (1891) P. 118.

(2) *The S. S. Takliwa* (1946) Merchant Navy Journal Vol. VIII page 22.

APPEAL FROM COURT OF INVESTIGATION.

D. S. Marshall for the Appellant.

C. H. Butterfield for the Crown.

Brown, J. : — This is an appeal by Mr. William Sutherland Stoker from the Order of a Court of Investigation appointed to examine the circumstances attending the stranding of the S. S. "Matang." The Order is dated 20th March 1947 and the material part reads as follows :—

> That the Certificate of the Master, Mr. William Sutherland Stoker, be suspended for three months from to-day's date and that a Certificate of Competency as First Mate (Foreign Going) be issued in lieu thereof and that he pays $140 towards the costs of this Investigation.

The facts so far as they are material to this appeal are as follows :—

The appellant was the Master of S.S. "Matang", and at 4.56 a.m. on the morning of 23rd January 1947 the vessel ran aground. The fixed position of the vessel had last been taken at 12 noon on the 22nd. Thereafter the vessel had proceeded by dead reckoning until the time of the stranding — a period of some 17 hours. The appellant left the Bridge shortly after midnight, leaving instructions that he was to be called at 5 a.m. At 5 a.m., according to the D.R. position on the chart the vessel's position should have been latitude 1° 56½′ North, longtitude 110° 35½′ East. This would have brought the vessel about 12½ miles off Tanjong Po at 5 a.m. At the time of the stranding visibility was moderate to poor with continuous rain. Tanjong Sirik lights were not in operation, nor was the Tanjong Po light. In fact there were no shore lights. At the time of the casualty the vessel was found to be 19 miles further down her course (i.e. 19 miles nearer to the land) and 7 miles to the west of her course. The appellant is only able to account for this wide variation between her position when she stranded and her D.R. position on the chart by the intervention of south-westerly sets. The appellant has been in the service of the Straits Steamship Company for about 19 years, and for 22 years he has had experience of coastal navigation in these local waters as Master of coastal trading vessels.

The short point is whether the appellant was negligent in proceeding to make a land fall, after 17 hours steaming by dead reckoning, without taking soundings or other precautions in view of the poor visibility then obtaining and the absence of shore lights or other navigational aids which might have enabled him to check his dead reckoning position.

The appellant, in the proceedings before the Court of Investigation, called two witnesses of considerable experience as Masters, both of whom expressed the view that to make an allowance of 12 miles from the off-lying dangers of an unlighted coast after steaming by dead reckoning for 17 hours was sufficient, and within the tradition of local coasting navigation. One of these witnesses, Capt. Benfield, was further asked if he would consider it necessary to take soundings when, according to the D.R. position, he was 12½ miles off Tanjong Po in uncharted depths of water. His answer was —

> If I was satisfied with my dead reckoning position I would not take soundings until I was proceeding closer to the coast.

In our opinion, in the first 9 words of that answer lies the crux of this case. The failure to take soundings, in order to be excusable, must be conditional upon being satisfied with the dead reckoning position. But the appellant took no steps to satisfy himself that his dead reckoning position was correct. Therein lay his fault. In the absence of shore lights the only step he could have taken to check his position, short of taking a fixed position with instruments, was by taking soundings. It seems to us to be idle to say that it was no good taking soundings in water of uncharted depth. That argument is based upon the very same false assumption which caused this casualty; namely that nothing had occurred to make his D.R. position incorrect and that he was therefore still in water of uncharted depth. As a fact he was in water of charted depth, and the lead would have shewn it. This Court is in agreement with the Court below in their answers to Questions 6, 8 (b) and (c) and 12.

Thus far we have intentionally refrained from making any reference to the suggestion that these particular waters are liable to sets which are more erratic and unpredictable than in most waters. The reason for the omission is that, acting with the advice of its Assessors, this Court desires to record its clear opinion that in no waters can a vessel be safely navigated under conditions of poor visibility or darkness with a view to making a landfall, after 17 hours steaming by D.R., except by checking the D.R. position by observations or fixes or, when no means of verifying the vessel's position are available, by taking regular soundings to ensure that the vessel has a safe depth of water under her keel and to obtain an indication whether or not she is approaching dangerously shallow waters. Having discussed this matter fully

with the Assessors, this Court wishes to record the view that in no waters can it be other than negligent, when making a landfall, to assume that no set will take place which may so falsify the D.R. position (after 17 hours) as to bring the vessel within dangerous proximity to the off lying dangers of the coast.

But if in fact the sets in these waters are known to be an abnormally erratic character, then, (in the case of a master with 22 years experience of these waters) the negligence is more culpable. Upon the question of whether these waters are abnormally erratic we can only rely upon the evidence, and we would refer to the following passages.:—

(1) Q. In your experience in these waters are you to expect from time to time abnormal sets?

Capt. Benfield: A. Yes. The sets are erratic. You may go for four or five months or even a year and then get a set you cannot account for . . . . I would agree that strong sets are possible . . . . I agree that nearer the coast abnormal sets sometimes occur.

(2) Q. Can you say whether or not, so far as local coasting vessels are concerned unexpected sets are to be expected from time to time?

Capt. Gardener: A. Yes, they are.

Q. Would you agree, therefore, that allowance should be made for the unexpected?

Capt. Gardener: A. Yes, I would.

At the hearing of this appeal learned Counsel objected that this evidence (which was elicited by learned Crown Counsel in the Court below during his cross-examination of the appellant's witnesses) was inadmissible upon the ground that it was a matter for the expert advice of the Assessors. In support of this objection (which was not made in the Court below) the case of *The Kestrel*[1] was cited. In that case the question upon which evidence was sought to be adduced was as to the proper course to take to pass clear of the Casquets, and it was held to be inadmissible because the nautical assessors were there to advise on just such a point. In this case however, the evidence which was elicited by Mr. Butterfield in cross-examination went directly to the issue of negligence. If in fact the sets in these waters are erratic, and if "so far as local coasting vessels are concerned unexpected sets are to be expected from time to time", then, in the case of a Master with 22 years experience of these waters, is it negligent if he fails to take adequate precautions against the possibility of such a set occurring? The evidence was clearly admissible, and most relevant.

From that evidence it would appear that the sets in these waters are of an abnormally erratic character, and that in these waters it is more than ever necessary to make provision for the unexpected. The appellant says: "I did make provision. I set my D.R. course 12 miles from the off-lying dangers of the coast." It can only be repeated that his fault lay in assuming that his D.R. position was correct. It was right to make an allowance of 12 miles. But it was futile without taking steps to see that this allowance was not being affected by the intervention of some unexpected set which, according to the evidence, is to be expected from time to time.

A case (2) was referred to of which an account appears in Vol. VIII of the Merchant Navy Journal (Winter 1946) at page 22. In that case the S. S. "Takliwa" was proceeding from Hong Kong to Madras past the Nicobar Islands. The Master ran aground 3 miles off the Great Nicobar Island after steaming by dead reckoning for some 28 hours. The D.R. course set by the Master should have taken the ship 34 miles off the Great Nicobar Island and 31 miles from the place where the vessel grounded. According to the Master this was due to current, and he stated that this current was not to be expected according to his experience or according to the current chart. The Court of Inquiry found that the cause of the stranding was due to "an abnormal northerly set probably due to cyclonic conditions prevailing," and the Master was exonerated. But the essential distinction between that case and the present is that in that case the vessel was not proceeding to make a landfall and that court found that "the use of the lead would have been futile and probably impossible under the conditions at the time of the grounding." In the present case, while no criticism can be made of the appellant's decision to make for a point 12 miles off the off-lying dangers of the coast, his mistake was in failing to take any steps to ensure that no set had occurred to alter or interfere with his arrival at that point at the expected time, although a sufficiently strong set in the direction of the land could only have the effect of bringing him into dangerous waters.

That concludes the matters which are in issue in this appeal. But reference must be made to Ground 2 (i) of the Grounds of Appeal; although it is not now suggested that the Court below was not properly constituted, and Mr. Marshall was given leave to amend this ground accordingly. It is however suggested that, despite the wording of Rule 26 (2), the spirit of that rule will not be complied with unless, in the case of a coastal navigation casualty, assessors with special knowledge of coastal navigation (as opposed to deep sea navigation) are appointed. And this Court was invited to make some observations which would be in the nature of a recommendation that this course should be adopted as the practice. This Court has had the advantage of discussing this matter with the Assessors, and apart from the fact that such a recommendation would clearly be outside the scope of the issues which are before us, we are not satisfied that in practice the difference in experience between deep sea navigation and coastal navigation is of such importance as to make any such recommendation necessary.

The Order of the Court below is upheld, and the appeal is dismissed with costs.

Commander R. K. Hudson R. N. and **Captain D. W. Clark** — We agree.

Appeal Dismissed.

LIM CHEW KEE v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) May 9, 1947]

Evidence Ordinance, Section 27 — Evidence only admissible if it leads to discovery of a fact.

In this case the appellant appealed against his conviction for housebreaking by night. The evidence showed that the premises of the complainant were broken into and a large quantity of cigarettes stolen. Six hours later the appellant was found with a considerable quantity of cigarettes of the same brand. Evidence was further given that the appellant gave information to the police and pointed out the house of the complainant.

Held, (1) that the evidence of possession in this case was an insufficient basis for conviction; (2) that the evidence of the accused having pointed out the house of the complainant was not admissible under Section 27 of the Evidence Ordinance as it did not lead to the discovery of any fact.

MAGISTRATE'S APPEAL.

A. P. Rajah for Appellant.

C. H. Butterfield for Respondent.

Murray-Aynsley, C. J. :— In this case the appellant was charged with housebreaking by night and convicted.

The evidence showed that the premises of the complainant were broken into and a large quantity of cigarettes stolen. Six hours later the appellant was found with a considerable quantity of cigarettes of the same brand. Evidence was further given that the appellant gave information to the police and pointed out the house of the complainant.

It appears to me that the evidence of possession was an insufficient basis for a conviction and that the other evidence would only be admissible under section 27 of the Evidence Ordinance if it led to the discovery of something which it did not.

The appeal must be allowed and the conviction quashed.

Appeal Allowed.